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IN THE

# Supreme Court of the United States

OCTOBER TERM 1961

I. L. F. Y. Co.,

*Appellant,*

—against—

THE TEMPORARY STATE HOUSING RENT COMMISSION and MARY ALICE JONES,

*Appellees.*

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

## APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

## APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

This brief is submitted pursuant to Rule 16 (3) of the Rules of the Supreme Court of the United States.

Appellee's motion to dismiss is based on its contention that no substantial federal question is raised. This is predicated on the theory that the challenged amendments fall completely within the "specific competence of the New York State Legislature to enact statutory provisions reasonably adopted to a real and undisputed public need" (appellee's brief p. 4).

Appellee's motion was filed on or about January 9, 1962, and by order of Mr. Justice Harlan, appellant was granted until May 8, 1962, to file its brief in opposition so as to submit the intervening fluid situation to this Court. The chaotic legalistic merry-go-round which has occurred since the determination of the New York Court of Appeals sought

to be reviewed here and particularly since the filing of appellee's motion, itself constitutes a complete reply to the claim of "special competence of the New York State Legislature" to act in this field. We cite the following factual events in the order of their occurrence.

1. On July 7, 1961, the New York Court of Appeals sustained as constitutional a statutory requirement that the purchaser of real estate, the income of which is insufficient to provide a reasonable return on its value must wait six months from the date of purchase before applying for leave to increase the rents and one year from the date of purchase before collecting an increase in rent. Chief Judge Desmond writing for the unanimous Court had held:

> "All this shows a reasonable basis for legislative action to slow up the process—*not so much to deprive owners of sales opportunities or buyers of adequate rents* as to remove or prevent conditions creating inflationary spirals of prices and rents." (See appendix to Jurisdictional Statement pp. 6A-7A. Emphasis supplied.)

2. On September 13, 1961, the appellee Commission determined appellant's purchase price to constitute a bona fide sales price under the statute and held in part as follows:

> "The sale in the sum of $1,337,375 was found to be a bona fide sale, at arms' length, on normal financing terms, at a readily ascertainable price and unaffected by special circumstances. *This sum should* therefore be used as the base in this proceeding." (Emphasis supplied.)

(A true copy of this valuation memorandum is reprinted in the appendix to this brief as Exhibit A.) (pp. 1a-2a.)

3. On October 10, 1961, appellee's accounting section returned the file to its Local Rent Administrator with the

directive for the "issuance of orders as indicated on attached form" but with the notation:

"Special Note to the Local Rent Administrator

"The basis of eligibility used in this application was the Purchase Price. The property was acquired by the landlord on February 20, 1961, and, therefore, no orders may be issued earlier than one year after this date."

(A true copy of this transmittal memoraadum is reprinted in the appendix to this brief as Exhibit B.) (See p. 3a.)

4. The attached form referred to in the transmittal memorandum established that appellant was entitled to a rental adjustment of $33,653.25. (A true copy of said form in printed in the appendix to this brief as Exhibit C.) (See p. 4a.)

5. On October 30, 1961, Robert E. Herman, the Administrator of the appellee Commission, issued Operational Bulletin 44 which stayed the final determination of all orders in fair return proceedings. (A true copy of said Operational Bulletin with accompanying Governor's statement is reprinted in the appendix to this brief as Exhibit D.) (See pp. 6a-11a.)

6. On January 22, 1962, there was introduced in the Legislature and on February 17, 1962, there was enacted into law Chapter 21, Laws of 1962, known as the Local Emergency Housing Rent Control Act which effective May 1, 1962, transfers the administration of rent controls to the City of New York. (See McKinney's 1962 Session Law News Supplement #2 issued February 25, 1962, pp. 51-64.) The provisions of said transfer statute here material are the following:

A. From February 17, 1962, until May 1, 1962, all rent increase proceedings except those involving voluntary increases are frozen. ("Maximum Rents shall not be increased during the period between the effective date of this act and May 1, 1962." Section 6.)

B. Effective May 1, 1962, the city is authorized to adopt new laws and regulations governing residential rents and evictions not necessarily consistent with the state statute (subd. 5 of Section 1).

C. Effective May 1, 1962, the city rent agency created by said transfer statute succeeds to all of the functions of the appellee Commission within the City of New York (subd. 6 of Section 1).

D. Effective May 1, 1962, jurisdiction of the appellee Commission over rent control in the City of New York is abolished (subd. 12 of Section 1).

E. Effective May 1, 1962, all pending proceedings including applications for rent adjustment undetermined before the Local Rent Administrator and orders on administrative appeal or protest are transferred to the city agency subject to redetermination by said city agency under its own law and regulations (subd. 11 of Section 1).

7. The effective date of the transfer statute, February 17, 1962, was *three days short* of the expiration of the one-year moratorium approved by the New York Court of Appeals, and, accordingly, the orders already typed for the $33,000 rent increase, acknowledged by appellee Commission to be required for the establishment of a reasonable rent, could not be issued.

8. On or about April 24, 1962, the City of New York, as authorized by said Chapter 21, Laws of 1962, adopted a local law known as the City Rent & Rehabilitation law. The provisions of said local law here material prohibit the

filing of any application for reasonable rent *until after two years of ownership* or *until February 20, 1963*, and affirmatively require the denial of appellant's application solely because of the pyramiding of these moratorium periods. (The provisions of the local law here material are printed in the appendix to this brief.) (See Exhibit E, p. 12a.)

It is respectfully submitted that this whirling dervish operation is at war with appellee's contention that the New York State Legislature had "special competence" (brief p. 4) to evaluate the situation. It is respectfully submitted that the bootstrap accumulation of a one-year pre-ownership moratorium, superseded on October 30, 1961, by an administrative freeze, on February 17, 1962, by a legislative freeze, and on May 1, 1962, with a two-year ownership condition precedent, demonstrates beyond peradventure of a doubt that this does not constitute reasonable police power regulation.

Appellant challenged validity of the February 17, statutory rent freeze and appeals therefrom were argued before the New York Court of Appeals on March 26, 1962, but could not be determined in time for the issuance of the orders prior to May 1, 1962, the effective date of City Rent Control.

Appellant's Jurisdictional Statement basically posed two questions, namely: Was appellant's property taken without due process and without just compensation:

(1) by the 1961 statute (Chapter 337, Laws of 1961), which established the six months ownership prefiling condition and one year ownership preincrease condition with the accompanying prohibition on retroactivity?

(2) by subjecting appellant's petition for reasonable rent relief to the amendments as a pending proceeding,

> although filed prior to the effective date of the 1961 amendments?

If, as we claim, the retroactive application of the challenged amendments to pending proceedings violated appellant's constitutional rights, then this court would have to reverse and would not necessarily reach the broader question of constitutionality. We have found no authority for this Court approving this retroactive police power exercise except *Fruhling* v. *Amalgamated Housing Corporation*, 9 N. Y. 2nd 541, appeal dismissed, —— U. S. —— (11/20/61) cited on p. 19 of appellee's brief.

*Fruhling*, we submit, is readily distinguished because there a tenant of a cooperative was subjected to an added surcharge by the adoption of a law subsequent to his occupancy. A tenant, unlike a property owner, has no vested property right. As Chief Judge Desmond of the New York Court of Appeals, then an Associate Judge of the Court, held many years ago in *Wasservogel* v. *Meyerowitz*, 300 N. Y. 125:

> "No vested or property right of a tenant is taken when his rent is raised."

A property owner, unlike the *Fruhling* tenant, does have a basic property right. Absent the police power, the *Fruhling* tenant who was granted a partial subsidy had no possessory rights. Conversely, here, absent the police power, appellant could adjust the rentals for his property commensurate with the market and without the intervention of any Court or administrative agency. The measure and degree by which such property rights may be regulated until it amounts to a taking of the property is at the very heart of this appeal. As Mr. Justice Holmes noted many years ago in *Block* v. *Hirsch*, 156 U. S. 135, 156:

> "The only matter that seems to us open to debate is whether the statute goes too far. For just as there comes a point at which the police power ceases and leaves only that of Eminent Domain; it may be conceded that regulations of the present sort pressed to a certain height might amount to a taking without due process of law."

Thus, we strongly urge that the retroactive application of the police power here must fall and should be reversed.

In the alternative, if this Court agrees with the New York Court of Appeals that, "The application and validity of statutes are determined as of the date we make our decision" (see appendix to Jurisdictional statement, p. 7A), then this Court, we submit, would consider the panorama of pyramiding freezes as they exist as of May 8, 1962, when this brief is submitted. As of this date, the one-year ownership condition precedent which prevented issuance of the reasonable rent orders on October 11, 1961, when the application was completed, has ripened into a two-year prefiling condition precedent. Under such circumstances the challenged 1961 amendments have become the proximate cause of a moratorium prohibiting appellant from securing rents which appellee has concededly found to be reasonable for the better part of three years, namely two years before filing plus a processing period of six to nine months.

In this posture, we recognize that this Court presumably would not wish to consider the basic validity of the New York City local law because the New York Court of Appeals has as yet had no opportunity to pass upon it. We respectfully submit, however, that this Court does have before it the question as of May 8, 1962, whether a statute is intrinsically valid which in effect provides that any purchaser of property subsequent to February 16, 1961, is precluded from

securing a reasonable return reflective of a reasonable rent until

(a) After one year's ownership (Chapter 337, Laws of 1961), plus

(b) until May 1, 1962 (the February 1962 freeze of Chapter 21, Laws of 1962) plus

(c) a refiling in February 1963 after two years ownership plus

(d) such added time it requires the city to process an application.

This is a bootstrap freeze which has entrapped appellant and stripped him of his constitutional rights.

Appellee's entire support for the original challenged amendments was predicated upon "the massive data considered by the Legislature" (appellee's brief, p. 16) which resulted in "the decision to defer the time within which the purchaser could seek and obtain" his reasonable rent, and that "such action would eliminate the abnormalities being encountered in sales and would also curb the inflation of the sales price itself."

The reference to massive data consistently referred to by appellee is illusory because the special five-man committee appointed by the Governor stated specifically in its report of February 24, 1961:

> "There is obviously little support in fact for the assertion that a 'widespread practice' exists of 'repeated sales' resulting in 'spiralling rents'." (See reprint of report McKinney's 1961 Session Laws, p. 1986 @ p. 1988.)

It is thus clear that the basic report reflecting alleged massive data itself concedes that there is no data and,

accordingly, no basis exists for police power intervention to deprive appellant of its reasonable rents reflective of a reasonable return for these moratorium periods.

There is moreover little left of appellee's argument when less than a year after the challenged amendments were adopted the "massive data" are brushed aside, a freeze is imposed and the entire operation is delegated to another subordinate branch of government without any compensation for the period under the state's own police power controls. Here appellee has concededly found the sale price to be above reproach and unaffected by "abnormalities". Additionally, beyond peradventure of a doubt appellee has determined that appellant is $33,000 short of earning a reasonable return reflected by a reasonable rent.

Appellee's brief (p. 5) suggests that over the years the basis for establishment of maximum rents has progressively changed. This represents an additional illusory concept. Since March 15, 1951, a property owner has been entitled to a minimum return calculated on the value of the property. So far as here material, from March 15, 1951, until June 30, 1957, the valuation of the property was defined as the current equalized assessed valuation with discretion in the appellee to adopt a different basis of value in four enumerated instances *inter alia* where there had been a recent bona fide sale of the property. This statutory discretion was interpreted by the courts as in effect justifying departure from an authorized alternate valuation only upon the basis of "sound considerations in fact and law". (See *Matter of Abrams* v. *McGoldrick*, 282 App. Div. 192, cited with approval on this point by the New York Court of Appeals in *Matter of Realty Agency, Inc.* v. *Weaver*, 7 N. Y. 2d 249.)

Effective June 30, 1957, this limited discretion to adhere to the equalized assessed value, in lieu of the statutorily

authorized alternate valuation, was revoked and the appellee was mandated to adopt a recent bona fide sales price as the valuation base. This statutory change was interpreted by the New York Court of Appeals in *Matter of Realty Agency, Inc.* v. *Weaver, supra,* as follows:

> "Subdivision 4 (par. (a)4(1)) in its present form, expressly mandates the use of sale price if the sale took place after March 15, 1953, as opposed to assessed valuation, *for as the Legislative Commission pointed out, bona fide sales prices are 'a more accurate reflection of value in fair return applications'* (N. Y. Leg. Annual 1957, p. 264; Ackerman v. Weaver, 6 N. Y. 2nd 283, 287)." (Emphasis supplied.)

The challenged statutory provisions in effect adopt a valuation prescription that upon evidence of existence of a better reflection of value than equalized assessment, namely a recent bona fide sale price, the property owner, appellee here, must wait to use that evidence until one year has elapsed from the date the evidence has become available.

Appellant respectfully submits that the bona fide sales price so determined by appellee in its valuation memorandum of September 13, 1961, printed in the appendix was not made any more bona fide or any more reflective of value by the interposition of the statutory moratorium which to date has deprived appellant from securing its reasonable return. If as appellee found on September 12, 1961, that the reasonable rents to provide a reasonable return should be increased by $33,000 on February 20, 1962, such an increase was no less reasonable and such a valuation was no less fair one year earlier at the time of the sale.

The statute is directed at the prevention of "unjust, unreasonable and oppressive rents" (Section 1). The chal-

lenged statute has demonstrably deprived appellant of "reasonable rents". Intervention of the police power is justified in the interests of the protection of the health, safety and welfare of a considerable number of people but it could never be used as a subterfuge to force property owners to subsidize tenants at free rent. The margin between a subsidy at a free rent and a subsidy at less than a reasonable rent has no legal substance.

In *Block* v. *Hirsch*, *supra*, this Court, speaking through Mr. Justice Holmes, observed that the statute provided machinery to fix a reasonable rent. Here the machinery was provided under an illusory basis but rendered inapplicable to appellant.

The cha lenged statutory provisions were arbitrary and invalid from the moment of their enactment. The legalistic merry-go-round described *supra* has merely dramatized the error of law committed by the New York Court of Appeals when it approved the statute as reasonable in 1961 on the mistaken assumptions that appellant would receive an increase by February 20, 1962. The intervening facts merely serve to illustrate the breach of appellant's constitutional rights. No further argument than the very existence of such facts is required.

## CONCLUSION

**The motion to dismiss should be denied. There are very substantial federal questions involved. The judgment below should be reversed; or in the alternative a plenary hearing of the constitutional issues should be permitted or in the further alternative, the appeal should be remitted to the New York Court of Appeals for further consideration in the light of the pyramided freezes now existing.**

Respectfully submitted,

ROBERT S. FOUGNER
*Counsel for Appellant*

McLAUGHLIN & FOUGNER
ALBERT W. FRIBOURG
*Of Counsel*

## APPENDIX

### Exhibit A

Sept. 13, 1961

MEMORANDUM TO THE FILE

SUBJECT: Docket No. AO 101095
Premises: 320 E. 57th St.
New York, N. Y.

The sale in the sum of $1,377,375.00 was found to be a bona fide sale, at arms' length, on normal financing terms, at a readily ascertainable price and unaffected by special circumstances. This sum should, therefore, be used as the base in this proceeding.

In considering the question of the normalcy of the financing terms, due consideration was given to:

1. The ratio of the cash payment received by the seller to

   a. the sale price of the property, and

   b. the annual gross income from the property.

2. The total amount of the outstanding mortgages which are liens against the property at the time of the closing (including purchase money mortgages) as compared with the equalized assessed valuation of the property.

3. The ratio of the sale price to the annual gross income of the property with consideration given to the total amount of prior financial rent adjustments, exclusive of rent adjustments because of changes in dwelling space, services, furniture, furnishings or equipment, major capital improvements, or substantial rehabilitation.

*Exhibit A*

4. The presence of deferred amortization in purchase money mortgages, or the assignment of such mortgages at a discount, and

5. Any other facts surrounding the sale which may have a bearing upon the question of financing.

SPECIAL NOTE TO THE LOCAL RENT ADMINISTRATOR

The basis of eligibility used in this application was the purchase Price. The property was acquired by the landlord on Feb 2, 1961 and, therefore, no orders may be issued earlier than one year after this date.

STATE OF NEW YORK 'Accounting Division'
TEMPORARY STATE HOUSING RENT COMMISSION' 250 Broadway 'Docket
New York 7, N. Y. 'No. AD-101085-LM

ACCOUNTING DIVISION DOCKET TRANSMITTAL 36506

TO: (Local Rent Office) Re: 320 East 57th Street
Address of Property

LOWER MANHATTAN (90)

The attached docket is transmitted for action in accordance with item marked below:

RECOMMENDATION:

.....1. Issuance of denial orders because of failure to qualify.

.....2. Issuance of denial orders because of failure to submit evidence.

.....3. Issuance of denial orders based on applicant's letter of withdrawal attached.

..X...4. Issuance of adjustment orders as indicated on attached form.

.....5. (Other).....

.....

.....

NOTE:

☐ Place an "X" in this space if bills have been mailed back to applicant.

OCT 11 ...

.....
(Transmitted by)

.....
(Title)

October 10, 1961
.....
(Date of Mailing)

nr # 4

FORM C-33B (Rev.10-61)

**Exhibit C**

(See opposite) ☞

STATE OF NEW YORK
EMERGENCY STATE RENT COMMISSION
ACCOUNTING DIVISION

AREA SUPERVISOR: LRO

No. of Rooms 319 5
No. of Elev. (Auto.)
No. of Elev. (Man.)
Walk-up 2 0

7. Income and Expenses for Year Ended: 11 (Month) 30 (Day) 60 (Year)

Docket No. GO 101095
L.R.O. Lower Manh. No. of Units 90

| ITEM | | As Submitted (A) | Adjustments (B) Plus: | Adjustments (C) Minus: | As Adjusted (D) |
|---|---|---|---|---|---|
| INCOME | Per Schedule | | | | |
| 8. Rental | A | 176379 00 | | 347.76 | 176031.24 |
| 9. Other | B | 164 16 | | 4 33 | 159.83 |
| 10. TOTAL INCOME | | 176543 16 | | 352.09 | 176190 57 |
| EXPENSES | Per Schedule | | Minus: | Plus: | |
| 11. Fuel | C | 11020 62 | 135 47 | | 10885 15 |
| 12. Utilities | D | 9284 07 | 50 60 | | 9233 47 |
| 13. Payroll & Related Costs | E | 43431 42 | | 726 63 | 44158.05 |
| 14. Real Estate Taxes | F | 29540 00 | 1440 | | 28096 00 |
| 15. Insurance | G | 2575 52 | 301 86 | | 2273.66 |
| 16. Management | H | 2276 27 | 10 57 | | 5285 70 |
| 17. Repairs & Maintenance | I | 11715 31 | 2531 78 | | 9183 53 |
| 18. Replacements & Improvements | J | — 0 — | | | — 0 — |
| 19. Miscellaneous | K | 1165 73 | 207 49 | | 957.24 |
| 20. Depreciation | L | 16534 00 | 7 50 | | 16526 50 |
| 21. TOTAL EXPENSES | | 131564 76 | 5090 27 | 726 63 | 127201 32 |
| | | | Plus: | Minus: | |
| 22. NET OPERATING INCOME FOR THAT YEAR | | 44978 40 | 5090 27 | 1079 22 | 48989 25 |
| (Difference between Items 10 and 21. Sum of Items 10 and 21.) | | | | | |
| 23. Assessed Valuation: Year | 76/61 | | $ 70,000 - | | |
| 24. RATIO OF LIABILITY (Complete either (a) or (b) below): | | | | | |
| (a) Qualified A.V. (A.V. divided by Rate of | | | | | |
| (b) Any Alternate Valuation, per Form 4-1(5)G - | | | | | |
| Nature - Low Income Limit | | | | | 12642.50 |
| 25. NET INCOME (24 (b) of Item 24) | | | | | 36653.25 |
| 26. NET OPERATING INCOME (Item 25 minus Item 22) | | | | | 19.2 % |
| 27. Percent of Rental Income (Item 26 divided by Item 8) | | | | | |

Prepared by: [signature] Title Reviewed by: Title Date

P 4-1(5)G (12-60)

## Exhibit D

### OPERATIONAL BULLETIN STAYING FINAL ACTION ON FAIR RETURN CASES

STATE OF NEW YORK

TEMPORARY STATE HOUSING RENT COMMISSION
280 Broadway
New York 7, N. Y.

October 30, 1961

Operational Bulletin No. 44—State by Governor Rockefeller

Appended hereto is the Statement by Governor Nelson A. Rockefeller released Sunday, October 29, 1961, on the subject of rent control and the Commission's review of all applications under the fair return provision of the Law to determine the effect of the 1961 equalization rates upon tenants.

Pending completion of the review, no final action on fair return applications (Sec. 33(5)) may be taken.

Robert E. Herman
Commissioner and
State Rent Administrator

THE NEW YORK TIMES, MONDAY, OCTOBER 30, 1961.

# Text of Governor's Curb on Rent Rises

Following is the text of Governor Rockefeller's statement announcing a temporary freeze on rent increases under the equalization provisions of the 1961 Emergency Rent Control Law.

For several weeks Mayor Wagner has conducted a campaign of falsehood and vilification of the State Legislature and my administration with respect to rent control in New York City.

The hysterical nature of the Mayor's attacks have been such as to alarm tenants and to grossly distort the record. I am therefore issuing this statement to clarify the situation and outline a course of action.

I have stated repeatedly that rent control must and will be continued to protect tenants so long as the crisis in housing exists. The real answer to the problems of tenants and landlords alike is, of course, a free and competitive market resulting from more and better housing. The Mayor's negative response to my proposals for new state-financed middle-income housing for 1,000,000 residents of New York City is a measure of his insincerity and lack of imagination in this field.

### City Control Invited

If the Mayor is dissatisfied with the state's handling of rent control, the City of New York could have taken over the regulation of rents within its boundaries at any time in the past six years. The city has this option right now under Section 13-A of the rent-control law enacted in 1953 during the Harriman administration. Yet the Mayor has dodged this home rule option throughout these six years. And now under challenge from Attorney General Lefkowitz, he again seeks to evade acceptance of responsibility in a field in which he is loud in his complaints at election time.

Associated Press

**STUDYING RENT LAW: Robert E. Herman, State Rent Administrator. Rent increases in state will be frozen until he completes his study of effects of the new equalization provision.**

Most tenants will remember that the only reason the State of New York became involved at all in New York City rent control was the complete breakdown due to maladministration and corruption in rent control in the city in 1959.

I pledged in my 1958 campaign for Governor that I would strengthen rent control, and this I have done.

### Legal Actions Listed

In the 1960 session of the Legislature, during the first year of my administration, the following action was taken to close loopholes in the rent-control law:

¶Control was extended to certain rooming houses which had previously evaded rent regulations.

¶Certain pseudo-hotels, which had been decontrolled by administrative order during the Harriman administration, were returned to rent control.

¶Decontrol was prevented for buildings where unscrupulous landlords had deliberately permitted disrepair to obtain an order to vacate from local building inspectors.

¶Treble-damage actions were permitted on behalf of a tenant against a landlord who had not complied with an order of the Rent Commission to refund overcharges.

Again, in 1961, when the rent-control law was extended for another two years, the law was further strengthened in favor of tenants.

¶Rent increases based upon real estate speculation were eliminated.

¶Retroactivity of rent increases granted under "fair return" proceedings was eliminated.

¶Provisions of the law to protect tenants evicted to permit demolition and construction of new housing were strengthened.

### The Present Controversy

Despite these seven major actions to strengthen rent control thus far in my administration, controversy now arises over an action taken in the 1961 session.

I refer specifically to the amendment permitting use of the most recent equalization rates in place of the 1954 equalization rates to determine full value of a rental property in "fair return" proceedings.

This use of current equalization rates was included in the 1961 rent-control law, based upon recommendations of the bi-partisan Temporary State Commission on Rents and Rental Conditions. Neither the Democratic nor the Republican members of the commission raised any question at the time as to the fairness of using the latest equalization rates as the basis for determining full value of a rental property in "fair return" proceedings.

The logic of this bi-partisan conclusion was based upon the essential purpose of equalization rates—which is to supply a mathematical average for computing from assessed values the true market value of a property. The latter value, in turn, is the basis for computing the 6 per cent annual return permitted landlords under the Rent Control Law.

This action was taken, however, prior to completion and announcement in June, 1961, of the new equalization rates by the Board of Equalization and Assessment. The legislative action therefore was based upon a logical assumption of equity—but without detailed information on the specific impact of the new equalization rates, since they were not then available.

### Rise in Applications

The renewed and amended rent law and the new equalization rates became effective on July 1. Since then, in New York City during the July 1 to Sept. 30 period, applications for rent increases under the new equalization rates have risen to a total of 1,082 buildings for the three months, compared with 688 for the same three months last year.

Only some fifty of these have been approved, including an average of five tenants for each application.

As soon as the possibility appeared of an unanticipated impact of the application of the 1961 equalization rates, I directed the Rent Administrator to give intensive study to all applications to determine the precise effect of these rates upon tenants.

Consequently:

1. This review of all such applications is continuing. Pending its completion the Rent Administrator will not take final action upon these applications from the landlords.

2. I shall promptly propose amendments to the rent-control law which will eliminate whatever inequities are disclosed resulting from application of the 1961 equalization rates.

*Exhibit D*

## RELEVANT PORTIONS OF CHAPTER 21, LAWS OF 1962 FREEZING RENTS AND TRANSFERRING RENT CONTROL TO THE CITY OF NEW YORK.

Section 6 freezes all maximum rents from February 17, 1962, to May 1, 1962, and prohibited the issuance of the orders on appellant's application with the following provision:

§6. Notwithstanding any provision of chapter three hundred thirty-seven of the laws of nineteen hundred sixty-one, maximum rents established in any city having a population of one million or more pursuant to the emergency housing rent control law, as last amended by such chapter, shall not be increased during the period between the effective date of this act and May first, nineteen hundred sixty-two, except with the voluntary written consent of the tenant affected.

Subdivision 5 of Section 1 authorizes the City of New York effective May 1, 1962, to adopt its own rent control laws and regulations with the following provision:

5. *Authority for local rent control legislation.* At any time after the effective date of this act, each city having a population of one million or more, acting through its local legislative body, is hereby authorized and empowered to adopt and amend local laws or ordinances in respect of the establishment or designation of a city housing rent agency. When it deems such action to be desirable or necessitated by local conditions, such city is hereby authorized and empowered to adopt and amend local laws or ordinances effective on or after May first, nineteen hundred sixty-two in respect of the regulation and control of residential rents, with provision for the establishment and adjustment of fair

*Exhibit D*

and equitable maximum rents, the classification of housing accommodations, the regulation of evictions, and the enforcement of such local laws or ordinances. The validity of any such local laws or ordinances, and the rules or regulations promulgated in accordance therewith, shall not be affected by and need not be consistent with the provisions of the state emergency housing rent control law or with the rules and regulations of the temporary state housing rent commission thereunder.

Subdivision 6 of Section 1, effective May 1, 1962, transferred all functions of the appellee Commission within the City of New York to the City rent agency and provides as follows:

6. *Succession of city agency to state rent control functions within city.* All the functions and powers possessed by and all the obligations and duties of the temporary state housing rent commission and the state rent administrator under the provisions of the state emergency housing rent control law and the rules and regulations of the commission thereunder, insofar as they relate to the regulation and control of residential rents and evictions within a city having a population of one million or more, shall be transferred to the city housing rent agency of such city on May first, nineteen hundred sixty-two, subject to the provisions of any local laws, ordinances, rules or regulations adopted pursuant to subdivision five of this section. All acts, orders, determinations, decisions, rules and regulations of the temporary state housing rent commission relating to the regulation and control of residential rents and eviction within such city which are in force at the time of such transfer shall continue in force and effect as acts, orders, determinations, decisions, rules and regulations of such city housing

rent agency until duly modified, superseded or abrogated pursuant to such local laws, ordinances, rules or regulations.

Subdivision 12 of Section 1 terminated effective May 1, 1962, the jurisdiction of the appellee Commission over rent control in the City of New York with the following provision:

12. *Termination of state regulation and control.* On and after May first, nineteen hundred sixty-two, the temporary state housing rent commission and the state rent administrator shall have no jurisdiction over the regulation and control of residential rents and evictions within any city having a population of one million or more.

Subdivision 11 of Section 1 provides for the transfer effective May 1, 1962, of all proceedings pending before the appellee Commission as of May 1, 1962, including appellant's application in the following language:

11. *Transfer of certain pending matters.* Except as provided in subdivision thirteen of this section, any matter, application, proceeding or protest undertaken, filed or commenced by, with or before the temporary state housing rent commission or the state rent administrator relating to the regulation and control or residential rents and evictions within a city having a population of one million or more and pending on May first, nineteen hundred sixty-two, shall be transferred to, conducted by, and completed or determined by the city housing rent agency. In discharging such responsibilities the city housing rent agency shall act in conformity with the provisions of the state emergency housing rent control law, and the rules and regulations promulgated thereunder, governing such matters, applications or proceedings, unless at the time such action is taken,

such state law, and the rules and regulations promulgated thereunder, have been amended or superseded by local laws, ordinances, rules or regulations adopted pursuant to subdivision five of this section, and in such event, in conformity therewith to the extent such local law, ordinances, rules or regulations are made expressly applicable to such matters, applications or proceedings.

## Exhibit E

## RELEVANT PORTIONS OF CITY RENT AND REHABILITATION LAW

### Effective May 1, 1962

The provisions of the City Rent & Rehabilitation Law here material and hereinafter referred to as the city rent law are the following:

(a) The prohibition against the filing of an application for a 6% return until two years from the date of purchase of the property, in that Section Y41-5.g(1)(a)(2)(ii) provides as follows:

> "An application for an increase in any maximum rent under this subparagraph (a) may not be filed with respect to any property if on the date when the application is sought to be filed:
>
> "(ii) Less than two years have elapsed since the last sale of the property occurring before or after May 1st, 1962, and the application is based on a sale price in excess of the assessed valuation."

(b) The applicability of the foregoing two-year pre-filing waiting period to a pending proceeding filed under the state statute by requiring a dismissal of such pending proceeding in the following directive:

> "The city rent agency shall treat such application as if it were sought to be filed May 1, 1962; provided, however, that in any case where the provisions of such subsections (i) and (ii) (reference to the two-year pre-filing ownership period) would require the denial of any such application if it were so treated, but would

*Exhibit E*

not require the denial thereof if such application were treated as if it were sought to be filed on September 1, 1962, the city rent agency, notwithstanding any other provision of this title, shall withhold determination of such application until such September 1, 1962, and solely for the purposes of applying the provisions of such subsections (i) and (ii) thereto shall treat such application as if it were filed on such September 1, 1962" (Sec. Y41-14.b).